

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

=====

COMPLETE TITLE OF CASE

H.K.R.,

Respondent,

v.

EVERY STEMMONS,

Appellant.

DOCKET NUMBER WD 70560

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 13, 2009

Appeal from

The Circuit Court of Platte County, Missouri
The Honorable Daniel M. Czamanske, Judge

JUDGES

Newton, C.J., and Welsh and Mitchell, JJ.

CONCURRING.

ATTORNEYS

H.K.R.

Respondent, *pro se*,

Steven R. Schanker
Kansas City, MO

Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

H.K.R.,)	
)	
Respondent,)	WD 70560
v.)	
)	OPINION FILED:
AVERY STEMMONS,)	October 13, 2009
)	
Appellant.)	

Before Division Three Judges: Thomas H. Newton, C.J., and James E. Welsh and Karen King Mitchell, JJ.

Ruling: Reversed and remanded with instructions.

Avery Stemmons appeals the circuit court's entry of a full order of protection under Section 455.020,¹ Missouri's Adult Abuse Act. On appeal, Stemmons argues that Section 455.020.1 did not apply to his alleged conduct in that he neither qualified as the alleged victim's present or former family member nor stalked her. We agree and therefore reverse and instruct the circuit court to vacate the order of protection.

Division Three holds:

For an order of protection to be available under Section 455.020.1, the accused must have either (1) subjected the alleged victim to abuse and qualified as the victim's present or former family member or (2) stalked the alleged victim. The record shows that Stemmons was not a present or former family member of the alleged victim and that he did not "stalk" the alleged victim.

It is undisputed that the accused was not and has never been related to the alleged victim. Moreover, "stalking" requires, among other things, "two or more incidents evidencing a continuity of purpose." § 455.010(10)(b). Here, it is undisputed that only one incident occurred.

Since Section 455.020.1 requires either (1) abuse plus a familial relationship or (2) stalking, it did not apply to the accused in this case. Therefore, the circuit court misapplied the law in entering a full order of protection against Stemmons, and we reverse and remand with instructions to vacate the Order.

Opinion by Mitchell, J.

October 13, 2009

* * * * *

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.

¹ All statutory references are to RSMo 2000, updated through the 2008 Cumulative Supplement.